IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

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| § | CIVIL ACTION NO. 3:13-cv-1509 |
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PLAINTIFFS' MOTION SUMMARY JUDGMENT UNDER RULE 56(C) OF THE FEDERAL RULES OF CIVIL PROCEDURE

PLAINTIFFS, Toni Miller, Susan Elliott, and Ariel Kleinsmith acting by and through their attorney of record James B. Moulton and under Rule 56(c) of the Federal Rules of Civil Procedure and Rule LR 56.3(a) of this Court, hereby moves the Court to issue an order to enter a summary judgment in their favor and against defendants.

(1) <u>Summary</u> The grounds for this motion, as set forth in greater detail in plaintiffs' supporting brief filed and served concurrently herewith, are that there is no genuine issue of any material fact such that Plaintiffs are entitled to a judgment against Defendants as a matter of law upon the causes of action set forth in the Complaint for recovery under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* ("the Act") for the payment of overtime wages, liquidated damages, interest, costs and attorney's fees.

The elements of plaintiffs' claim for overtime wages are:

a. Defendants constitute an employer covered and governed under the provisions of the Act.

- b. Plaintiffs are employees covered and governed under the provisions of the Act.
- c. Plaintiffs performed job duties for the defendants as employees for which they were not exempt from the overtime requirements of the Act.
- d. Defendants wilfully failed and refused to pay overtime wages to plaintiffs to in violation of the Act.
- e. Defendants are jointly and severally liable to pay overtime wages and liquidated damages to Plaintiffs respectively in the principal amount as follows::

Toni L. Miller \$387,068.30

Susan Elliott \$158,178.14

Ariel Kleinsmith \$34,560.00

- f. Defendants' violation of the Act was knowing and willful, giving rise to liability to plaintiffs for the payment of liquidated damages and the application of the 3 year statute of limitation.
- (2) Appendix. This motion is supported by an Appendix submitted under LR 56.5 of this Court filed and served concurrently herewith.

WHEREFORE, plaintiffs hereby request that this court issue an order to grant summary judgment in their favor and against defendants, and order defendants overtime wages as required under the Act, and together with liquidated damages, pre- and post-judgment interest, costs and

attorney's fees as provided under the Act, and together with all other relief the Court deems just and appropriate under the circumstances.

DATED this 14th day of March, 2014.

JAMES MOULTON, ATTORNEY AT LAW

By: James B. Moulton

JAMES B. MOULTON

Bar # 24007712

3939 Hwy. 80 E., Suite 486

Mesquite, Texas 75150

Telephone: (972) 698-0999 Facsimile: (903) 705-6860

Email: jim.moulton@gmail.com

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify one true and correct copy of the foregoing instrument was served on Defendants' lead counsel of record by electronic mail through the Court's EFCEM system on this 14th day of March, 2014.

By: /S/ James B. Moulton

JAMES B. MOULTON Bar # 24007712 3939 Hwy. 80 E., Suite 486 Mesquite, Texas 75150 Telephone: (972) 698-0999

Facsimile: (903) 705-6860 Email: jim.moulton@gmail.com

Attorney for Plaintiffs